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HAWAII LABOR
RELATIONS BOARD

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,
DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS,

Complainant,

vs.

COASTAL CONSTRUCTION
COMPANY, INC.,

Respondent.

) CASE NO. OSH 2006-26
) (Inspection No. 309460814)
)
) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBIT A; APPROVAL
) AND ORDER

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent COASTAL CONSTRUCTION COMPANY, INC. ("Respondent") having reached a
full and complete settlement of the above-captioned contested case presently pending before the
Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about July 12, 2006, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located
at 68-1689 Waikoloa Road, Kamuela, Hawaii, 96743.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on September 28, 2006 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$14,200.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 68-1689 Waikoloa Road, Kamuela, Hawaii, 96743.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than March 30, 2007; failure to timely do so may result in additional penalties or follow up inspections.

5. The Citation is amended as follows: citation 2, item 1, alleging a repeat violation of 29 CFR 1926.501(b)(13) [chapter 12-121.2, HAR], is withdrawn.

6. The Director reduces the aggregate penalty from \$14,200.00 to \$1,700.00, which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Construction workers installing roof flashing on a low-sloped residential construction project after the completion of the roof work shall be protected from fall hazards by conventional fall protection (i.e., personal fall arrests system, safety net system or guardrail

system). Refer to 29 CFR 1926.501(b)(13) (chapter 121.2, HAR), regarding the duty to provide fall protection to workers engaged in residential construction activities 6 feet or more above a lower level. Residential construction activities includes, but is not limited to, the erection of roof trusses, roof sheathing and flashing, exterior wall erection, floor joist installation, and floor sheathing operations during residential construction. Slide guards are only permissible as a form of fall protection under certain conditions during 'roofing work,' which is defined in 29 CFR 1926.500 (chapter 121.2, HAR).

9. If Respondent fails to fulfill any condition of this Agreement within the time stated, citation 2, item 1, that was deleted along with any attendant penalty shall be automatically and without further notice be reinstated and shall be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

11. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

12. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, 3-8-07.

COASTAL CONSTRUCTION COMPANY, INC.

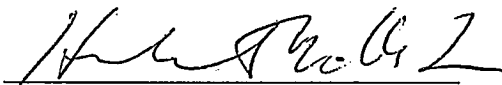
By: 

MICHAEL S.H. YOUNG

Its: Safety Coordinator

APPROVED AS TO FORM:

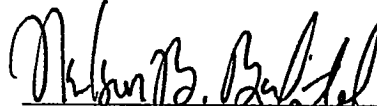
DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



HERBERT B.K. LAU

Deputy Attorney General

Attorney for Director of Labor and
Industrial Relations, State of Hawaii

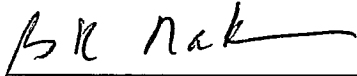


NELSON B. BEFITEL

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 238

DATED: MARCH 15, 2007



BRIAN K. NAKAMURA, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 3110 0003 5610 5827

Citation and Notification of Penalty

To:
~~Coastal Construction Company Inc~~
and its successors
1900 Hau St
Honolulu, HI 96819-3255

Inspection Number: 309460814 (Charles Clark)

Inspection Date(s): 07/12/2006 - 07/12/2006

Issuance Date: 09/28/2006

OSHC ID: X8851

Optional Report No.: 08306

Inspection Type: Referral

Scope of Inspection: Partial Inspection

Inspection Site:
68-1689 Waikoloa Rd
Kamuela, HI 96743

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

~~An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on~~

09/28/2006. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees

and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309460814
Inspection Dates: 07/12/2006 - 07/12/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 09/28/2006

Citation and Notification of Penalty

Company Name: Coastal Construction Company Inc
Inspection Site: 68-1689 Waikoloa Rd, Kamuela, HI 96743

The alleged violations below (1a-1d) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 1a Type of Violation: Serious

29 CFR 1926.451(b)(2) [Refer to chapter 12-130.1, HAR] was violated because:

An employee working on a single 2 x 10 inch plank was exposed to fall hazards which could result in serious injuries.

29 CFR 1926.451(b)(2) states "Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, each scaffold platform and walkway shall be at least 18 inches (46 cm) wide."

Location: Bldg 31

Date By Which Violation Must be Abated:
Penalty:

10/02/2006
\$1,700.00

Citation 1 Item 1b Type of Violation: Serious

29 CFR 1926.451(f)(3) [Refer to chapter 12-130.1, HAR] was violated because:

There were no inspections conducted by a competent person before each work shift or after any occurrence which could affect a scaffold's structural integrity. A single wood pole scaffold system on the site had cracks in the scaffold planking and there were no diagonal bracing. Both conditions which were not found or corrected by a competent person conducting inspections exposed the employees working on the scaffolding to fall hazards which could result in serious injuries.

29 CFR 1926.451(f)(3) states "Scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift, and after any occurrence which could affect a scaffold's structural integrity."

Location: Building 31

Date By Which Violation Must be Abated:

10/02/2006

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309460814
Inspection Dates: 07/12/2006 - 07/12/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 09/28/2006

Citation and Notification of Penalty

Company Name: Coastal Construction Company Inc
Inspection Site: 68-1689 Waikoloa Rd, Kamuela, HI 96743

Citation 1 Item 1c Type of Violation: Serious

29 CFR 1926.452(a)(4) [Refer to chapter 12-130.1, HAR] was violated because:

Single wood pole scaffolding systems were not provided with any diagonal bracing which exposed the employees using the scaffolding to fall hazards and serious injuries.

29 CFR 1926.452(a)(4) states "Diagonal bracing in both directions shall be installed across the entire outside face of all double- and single-pole scaffolds."

Location: Bldg 31

Date By Which Violation Must be Abated: 10/02/2006

Citation 1 Item 1d Type of Violation: Serious

29 CFR 1926.454(a)(4) [Refer to chapter 12-130.1, HAR] was violated because:

An employee using a single wood pole scaffolding system did not know the load carrying capacity which exposed the employee to fall hazards and serious injuries.

29 CFR 1926.454(a)(4) states "The employer shall have each employee who performs work while on a scaffold trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards. The training shall include the following areas, as applicable:

(4) The maximum intended load and the load-carrying capacities of the scaffolds used."

Location: Bldg 31

Date By Which Violation Must be Abated: 10/09/2006

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309460814
Inspection Dates: 07/12/2006 - 07/12/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 09/28/2006

Citation and Notification of Penalty

Company Name: Coastal Construction Company Inc
Inspection Site: 68-1689 Waikoloa Rd, Kamuela, HI 96743

Citation 2 Item 1 Type of Violation: Repeat

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

- A) Two employees exposed to a 18 foot fall to the lower level were not protected from fall hazards.
- B) Employees involved in framing activities were not protected from fall hazards.
- C) An employee working 9 feet above the lower level was not protected from fall hazards.

All of the above could result in serious injuries.

29 CFR 1926.501(b)(13) states "Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502.

Note: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with 1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems."

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309460814
Inspection Dates: 07/12/2006 - 07/12/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 09/28/2006

Citation and Notification of Penalty

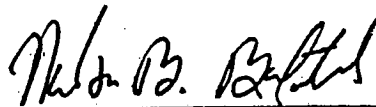
Company Name: Coastal Construction Company Inc
Inspection Site: 68-1689 Waikoloa Rd, Kamuela, HI 96743

The Coastal Construction Company Inc was previously cited for a violation of this occupational safety & health standard or its equivalent standard 29 CFR 1926.501(b)(13) which was contained in HIOSH inspection number 306263336, citation number 01, item 001, issued on December 9, 2003, and which became a final order on December 29, 2003.

Location: A) Bldg 35
B) Bldg 31
C) Bldg 29

Abatement Documentation Required

Date By Which Violation Must be Abated: 10/02/2006
Penalty: \$12,500.00


NELSON B. BEFITEL
DIRECTOR

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Coastal Construction Company Inc
Inspection Site: 68-1689 Waikoloa Rd.
Kamuela, HI 96743
Issuance Date: 09/28/2006

Summary of Penalties for Inspection Number 309460814

Citation 01, Serious	=	\$1,700.00
Citation 02, Repeat	=	\$12,500.00

TOTAL PENALTIES	=	\$14,200.00
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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.